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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

ALTON NOLEN,
Petitioner,
vs. Case No. CIV-22-272-F
JIM FARRIS,
Respondent.

TRANSCRIPT OF CASE MANAGEMENT CONFERENCE
BEFORE THE HONORABLE GARY M. PURCELL
UNITED STATES MAGISTRATE JUDGE
MAY 24, 2022
11:00 A.M.

APPEARANCES

FOR THE PLAINTIFF: Mr. Hunter S. Labovitz and Ms. Katherine E. Ensler, Federal Community Defender's Office, 601 Walnut Street, Suite 545 West, Philadelphia, PA 19106

FOR THE DEFENDANT: Ms. Caroline E.J. Hunt, Attorney General's Office, 313 N.E. 21st Street, Oklahoma City, OK 73105

Proceedings recorded by digital recording; transcript produced by computer-aided transcription.

1 (PROCEEDINGS HAD ON MAY 24, 2022.)

2 THE COURT: Okay. Let's see if we're all hooked up
3 here. Let's see.

4 Mr. Labovitz, can you hear me?

5 MR. LABOVITZ: Yes. Good morning, Your Honor.

6 THE COURT: And Ms. Ensler, can you hear me?

7 MS. ENSLER: Yes. Good morning, Your Honor.

8 THE COURT: Okay. If there is ever a time you can't
9 hear what we're saying, I want you to just interrupt us and
10 tell us that you cannot hear us. Okay?

11 MR. LABOVITZ: Yes, Your Honor.

12 THE COURT: Okay. Let's see here. Let me get
13 organized. All right.

14 The Court calls the case of Alton Nolen, Petitioner, vs.
15 Jim Farris, Warden. This is case CIV-22-272-F. The record
16 should indicate this matter comes on for a regularly scheduled
17 case management hearing. The record should indicate that
18 Hunter Labovitz and Katherine Ensler are present representing
19 the Petitioner, who does not appear. And Ms. Carolyn Hunt is
20 here representing the Respondent.

21 The record should further indicate that on March 31, 2022,
22 the petitioner filed his pro se request for appointment of
23 counsel and that this matter has been assigned to this Court by
24 the assigned judge in this matter, Stephen Friot. And has been
25 assigned for the purpose of case management proceedings.

1 On April 5th, 2022, I entered orders appointing the
2 Capital Habeas Unit of the Federal Community Defender's Office
3 of the Eastern District of Pennsylvania as Petitioner's
4 court-appointed counsel, and I set this matter for the case
5 management conference being held today. I, at this time, refer
6 the parties to General Order 10-1 filed in this Court on
7 January 11th, 2011, and they are advised to comply therewith.

8 As indicated by my previous order, the purpose of this
9 conference or hearing is to discuss the factual, legal issues
10 involved in the matter, if necessary; the dates for the filing
11 of the petition, the response, Petitioner's reply; I will
12 further take up the Petitioner's application to proceed in
13 forma pauperis and also whether or not discovery will be
14 requested by either party; and I will set a date by which all
15 the discovery motions must be filed and whether or not an
16 evidentiary hearing would be sought; and I will set a date by
17 which a motion for evidentiary hearing must be filed.

18 I further requested the parties to consult with each other
19 at least three days prior to today. Ms. Hunt, I assume counsel
20 for the Respondent has done that with the Petitioner's counsel;
21 is that correct?

22 MS. HUNT: Yes, Your Honor.

23 THE COURT: And I believe I'll hear Ms. Hunt easier.
24 Have you all agreed on a date or is there a difference of
25 opinion?

1 MS. HUNT: There's a difference of opinion, Your
2 Honor.

3 THE COURT: Very well. On behalf of the Petitioners
4 -- Petitioner, Mr. Labovitz, what day do you request to file
5 the petition?

6 MR. LABOVITZ: Yes, Your Honor. We are requesting
7 the date of January 27th, 2023, which, by our calculations, is
8 the statutory deadline under the ADDEA (sic), the one-year
9 deadline. So we would be requesting the entire time that we
10 are permitted under the statute.

11 THE COURT: Okay. What is the -- Mr. Farris's
12 position?

13 MS. HUNT: Your Honor, we object to that request. We
14 believe a filing date somewhere in November would be more in
15 line with common practice in this Court to try to have the
16 response filed by the deadline.

17 THE COURT: It is the practice in this Court, I will
18 tell counsel for the Petitioner, to have the matter fully
19 briefed and ready for decision -- now, not necessarily hearing
20 or other matters that may arise between now and then, but to
21 have it -- have basically the reply submitted to the Court to
22 the extent that, if you will, the initial petition is fully
23 presented to the Court along with the response and the reply
24 well in advance of a year from today. So let me do some
25 calculations and see where we are on this. I'll just come up

1 with my own, if necessary.

2 I need to get a calendar. Okay. Here we go. Let's see.

3 (SHORT PAUSE WHILE THE COURT CALCULATES.)

4 THE COURT: My silence is not confusing, I hope. I'm
5 not as good at reading calendars as I am other things, so bear
6 with me, please.

7 (CONTINUED PAUSE IN PROCEEDINGS.)

8 THE COURT: All right. Here is what the Court will
9 order under the circumstances. It's the policy of the Court,
10 as I indicated earlier, to have the matter presented without
11 any interceding hearings, discovery disputes, whatever may come
12 about, which Judge Friot can certainly deal with on his own
13 based upon what transpires between today and the deadlines that
14 I set based upon my policy. I've done -- and, Counsel, I'm not
15 trying to explain what I'm going to do, but basically other
16 than to tell you I've handled hundreds of these, unfortunately,
17 and my policy has always been the same and it's the Court's
18 policy to always be the same.

19 And, basically, with our previous policy, without going
20 into a definite explanation, would be that it would be ordered
21 at this time that the petition of the Petitioner should be
22 filed on or before December 5th, 2022. And that petition will
23 state with specificity the grounds for relief, the facts and
24 authorities alleged by the Petitioner for relief, and a
25 statement as to whether or not each ground asserted has been

1 properly exhausted or is subject to procedural bar.

2 Motions for leave to conduct discovery must be filed on or
3 before December 5th, 2022. That is not a coincidence. That
4 has always been consistent with the Court. Discovery motions
5 should be filed on or before the deadline for the filing of the
6 petition.

7 Respondent shall file a response to the petition no later
8 than 60 days following the filing of the petition. In that
9 regard, the specific day, if you're interested, would be
10 February 13th of 2023. Now, I'm not establishing that as the
11 date. I am establishing it that the response shall be filed 60
12 days following the filing of the petition. So if the petition
13 is filed earlier than that, the response date would be moved
14 up.

15 And then also regarding a reply, the Petitioner may file a
16 reply to the response no later than 45 days following the
17 filing of the response. The same statement refers to the
18 timing. The real date is 45 days after the actual filing of
19 the response. The date regarding what the Court uses to file
20 deadlines for motions for evidentiary hearing would result in
21 that date being March 30th, 2022. So the deadlines for filing
22 motions for evidentiary hearing is hereby set at March 30,
23 2022, which, if all days are used by all parties as to each
24 deadline, that would be the date of the actual filing of the
25 reply.

1 Does everybody understand that? Any questions?

2 (THE CLERK AND THE COURT HAVE AN OFF-THE-RECORD
3 DISCUSSION.)

4 THE COURT: What did I say, '22? On what? Oh,
5 excuse me. Yeah, let me repeat it. I messed it up. My clerk
6 brought it to my attention. Okay. Let me start again. And
7 I'm going to enter a written order with these dates specified
8 in the order.

9 The petition shall be filed on or before December 5th,
10 2022.

11 Motions for discovery must be filed on or before December
12 5th, 2022.

13 The Respondent shall file a response to the petition no
14 later than 60 days following the filing of the petition.

15 The Petitioner may reply to the response no later than 45
16 days following the filing of the response.

17 And a motion for evidentiary hearing must be filed on or
18 before March 30th of 2023. I think I misspoke earlier and said
19 2022. So evidentiary hearing motion must be filed -- and that
20 would coincide with, again, the deadline for the filing of a
21 reply if all times are used up at each stage of the proceeding
22 -- or the schedule, I should say.

23 We're going to take up now -- does anyone have any
24 questions about those dates?

25 MR. LABOVITZ: Your Honor, this is Mr. Labovitz. One

1 question. Is the request for evidentiary hearing -- the motion
2 for evidentiary hearing date, does that fit that March 30th, or
3 could that vary?

4 THE COURT: No, it does not vary.

5 MR. LABOVITZ: (Unintelligible).

6 THE COURT: Let me make it very clear. The only --
7 the varying dates are the dates of filing the response and the
8 reply.

9 The definite dates of filing a motion for discovery is
10 December 5th, 2022.

11 The definite deadline for filing a motion for evidentiary
12 hearing is March 30th, 2023. Those dates are etched in stone.

13 The filing of the response and the reply are in conformity
14 with the 60 days and the 45 days.

15 I don't try to make it confusing, I really don't, but
16 sometimes I understand why you're confused because I get
17 confused too. That's the way the court -- all judges of the
18 court got together 25 years ago, and these are the -- these are
19 the systematic ways we put these deadlines in motion. And I
20 know it seems confusing, but I want to make sure you
21 understand.

22 In other words, you file your petition before -- on or
23 before December 5th.

24 Mr. Farris will respond to that no later than 60 days
25 following the date you file your petition.

1 You may reply to the response no later than 45 days
2 following the date the response is filed.

3 The hard -- the etched-in-stone deadline for filing a
4 motion for discovery is December 5th, 2022.

5 And the etched-in-stone deadline for filing a motion for
6 evidentiary hearing is March 30th, 2023.

7 Are we clear?

8 MR. LABOVITZ: Yes, Your Honor.

9 THE COURT: Now, nothing should indicate (sic) your
10 ability to go to Judge Friot and have these dates changed.
11 These are the dates for the purpose of this proceeding only.
12 And if there's something that happens now and between these
13 deadlines, you have every right and courses as the assigned
14 judge, Judge Friot, would have every obligation to hear you and
15 determine if these dates should be changed or altered. Okay?

16 Now, the Petitioner has filed an application to proceed in
17 forma pauperis, which is hereby denied, as the petitioner paid
18 the \$5 filing fee on March 31st, 2022.

19 And I assume, Ms. Hunter, you wish to offer your customary
20 objection to the fact that the Respondent shall transmit the
21 state court record, including all trial and post-conviction
22 proceedings, to the Court on or before the date the response is
23 due to be filed?

24 MS. HUNT: Yes. We renew our objection, Your Honor.

25 THE COURT: I will note your objection. It will be

1 overruled. That's a little inside joke we have here sometimes,
2 Pennsylvania people. If you want to know more about it, talk
3 to Ms. Hunt. She gets mad at me sometimes, but she's kind of
4 given in on fighting and so we've given up.

5 Bottom line is the state court record will be filed on or
6 before the response is filed.

7 And, again, the parties are advised of General Order 10-1
8 filed on January 11, 2011. Now, Counsel in Pennsylvania, I
9 would -- I know you've done things with Judge Friot and I
10 probably shouldn't have to tell you to do it, but that general
11 order has to do with length of pleadings or briefs or whatever,
12 a lot of things the Court adheres to very strictly. So you may
13 want to be sure and look at that general order. I usually pass
14 out copies of it. Let me just broad-brush it here for you
15 while you're on.

16 The petition or opening brief shall be limited to 100
17 pages, exclusive of accompanying documents.

18 The response brief shall be limited to 125 pages,
19 exclusive of accompanying documents.

20 And the reply brief shall be limited to 25 pages,
21 exclusive of accompanying documents.

22 And then Local Civil Rule 7.1(d) goes into the print
23 style, footnotes shall not be less than -- I don't want to go
24 into it -- 13-point type. It gets real definitive after that.
25 But bottom line, page limits on the petition are 100, response

1 125, and the reply 25. Okay?

2 MR. LABOVITZ: Yes, Your Honor.

3 THE COURT: Now, that disposes of everything I have.

4 Does counsel, while we're all together, have a need to
5 communicate anything to the Court or to and from each other?

6 MR. LABOVITZ: Nothing from Petitioner, Your Honor.

7 MS. HUNT: Nothing from the State, Your Honor.

8 THE COURT: I appreciate it. And I'm glad you didn't
9 have to fly all the way back to Oklahoma today because it
10 started raining yesterday, Noah moved in with his Ark last
11 night, and it's still pouring down rain here. So you'll be
12 glad you didn't come.

13 MR. LABOVITZ: (Unintelligible).

14 THE COURT: Same here. Good luck to you. And please
15 feel free to communicate with me, if necessary -- not just ex
16 parte. I don't mean that. But I appreciate your appearance.
17 You come well recommended. Judge Friot and I talked about you
18 at length when I appointed you. And, unfortunately, I was
19 trying to think of how many of these I've done. I started the
20 process for our court here I think back in -- I can't remember,
21 '95 or '96, so I'd love to hear how you do it someday and see
22 if you think there's something unique or unusual or dead
23 (unintelligible) wrong about how we do it here. But not --
24 today is not the time or the situation.

25 So thank you all very much. Court will be in recess

1 subject to call.

2 (PROCEEDINGS CONCLUDED.)

3 CERTIFICATE OF OFFICIAL REPORTER

4 I, Tracy Thompson, Federal Official Realtime Court
5 Reporter in and for the United States District Court for the
6 Western District of Oklahoma, do hereby certify that pursuant
7 to Section 753, Title 28, United States Code, that the
8 foregoing is a true and correct transcript of the
9 electronically-recorded proceedings held in the above-
10 entitled matter to the best of my ability to hear and
11 understand said recording and that the transcript page format
12 is in conformance with the regulations of the Judicial
13 Conference of the United States.

14 Dated this 20th day of July 2022.

15
16 ***/S/ Tracy Thompson***

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